

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN J. CAVORLEY and U.S. COURT OF INTERNATIONAL TRADE,  
New York, NY

*Docket No. 00-2076; Submitted on the Record;  
Issued April 10, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on the basis that her accepted conditions of right knee sprain and hip sprain arising from her March 10, 1989 employment injury had resolved; and (2) whether appellant established that her claimed back condition is causally related to her March 10, 1989 employment injury.

On March 10, 1989 appellant, then a 53-year-old administrative assistant, slipped and fell to the floor while in the performance of duty. She ceased working the day of her injury. The employing establishment subsequently terminated appellant's employment effective September 21, 1990. The Office accepted her claim for right knee sprain and hip sprain and appellant received appropriate wage-loss compensation for approximately 10 years.

In a decision dated January 22, 1999, the Office terminated appellant's compensation and medical benefits with respect to her accepted conditions of right knee sprain and hip sprain.<sup>1</sup> Additionally, the Office found that appellant failed to establish that her claimed back condition was causally related to her March 10, 1989 employment injury. Accordingly, the Office terminated appellant's benefits effective January 22, 1999. On January 28, 1999 the Office amended its earlier decision to reflect a termination of benefits effective January 30, 1999.

On January 13, 2000 appellant requested reconsideration and submitted additional medical evidence. The Office reviewed her claim on the merits and in a decision dated March 6, 2000, the Office denied modification of its prior decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits with respect to her accepted conditions of a sprained right knee and hip.

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<sup>1</sup> The Office previously issued a notice of proposed termination of benefits on October 16, 1998.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>2</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>3</sup>

In terminating appellant's compensation and medical benefits, the Office relied substantially on the September 8, 1998 report of Dr. Norman N. Heyman, a Board-certified orthopedic surgeon and Office referral physician, who concluded that appellant had no disability with respect to her hip and her right knee. Consequently, no further treatment was recommended or required with respect to appellant's accepted conditions.

The contemporaneous medical evidence provided by appellant's treating physician, Dr. Mark P. Jarrett, a Board-certified internist, does not contradict Dr. Heyman's opinion regarding the resolution of appellant's accepted hip and right knee conditions. In fact, Dr. Jarrett's three most recent reports dated October 13, 1997, October 8 and November 23, 1998 do not attribute any ongoing disability to appellant's accepted conditions. Instead, Dr. Jarrett attributed appellant's current disability to post-traumatic lumbar radiculopathy. Accordingly, the medical evidence of record establishes that appellant no longer suffers from residuals of her employment-related right knee sprain and hip sprain. Therefore, the Board finds that the Office met its burden to terminate appellant's compensation and medical benefits with respect to the previously accepted conditions.

The Board also finds that the case is not in posture for decision regarding the issue of whether appellant established that her claimed back condition is causally related to her March 10, 1989 employment injury.

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which she claims compensation is causally related to the employment injury.<sup>5</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>6</sup> Where appellant claims that a condition not accepted or approved by the Office was due to her

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<sup>2</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>6</sup> See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>7</sup>

In the instant case, there is an unresolved conflict of medical opinion regarding the cause and extent of appellant's current back condition. Dr. Jarrett has treated appellant since October 8, 1991 and he attributed her post-traumatic lumbar radiculopathy to her March 10, 1989 employment injury. In a report dated October 3, 1995, he stated that what had been initially diagnosed as a sprained hip in 1989, was actually a sprain of the back with lumbar radiculopathy. Dr. Jarrett explained that it is "a frequent misdiagnosis to say the pain in the lateral aspect of the hip and buttock is secondary to hip joint disease," when "usually this is secondary to lumbar radiculopathy." In his most recent report dated November 23, 1998, Dr. Jarrett reiterated his opinion that appellant's current back condition was causally related to her employment injury and did not preexist the March 10, 1989 injury.

In contrast, Dr. Heyman diagnosed lumbar syndrome with degenerative changes and scoliosis. He concluded that these conditions were preexistent and unrelated to appellant's March 10, 1989 employment injury. Dr. Heyman characterized appellant's back condition as a "mechanical problem" and further noted that there were no signs of "lumbar radiculopathy, just a decreased range of motion with some degenerative changes...." He added that appellant's prognosis for her preexisting condition was poor.

The Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.<sup>8</sup> In its March 6, 2000 decision, the Office stated that Dr. Jarrett's November 23, 1998 report provided no rationale regarding the causal relationship between appellant's back condition and her 1989 employment injury. To the contrary, Dr. Jarrett provided a similar rationale as that set forth in his October 3, 1995 opinion. Moreover, he referred to his earlier 1995 report, which he characterized as "substantiating the fact" that appellant's current condition was causally related to her employment injury. It is also noteworthy that while Dr. Heyman found that appellant's current condition preexisted her employment injury, he did not clearly articulate the basis for his conclusion. Moreover, the earliest evidence Dr. Heyman referred to in his report, a November 3, 1992 magnetic resonance imaging scan, post dated appellant's injury by more than 3½ years. Thus, it is not entirely clear what evidence Dr. Heyman relied upon in concluding that appellant's current back condition predated her March 10, 1989 injury.

Neither Dr. Jarrett nor Dr. Heyman provided particularly well-reasoned opinions regarding the cause and extent of appellant's current back condition. However, their respective opinions are in conflict and neither opinion can be dismissed as lacking any probative value. Inasmuch as an unresolved conflict of medical opinion exists between Drs. Jarrett and Heyman, the case is remanded to the Office for further development of the record in accordance with 20 C.F.R. § 10.321(b).

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<sup>7</sup> *Jacquelyn L. Oliver, supra* note 5.

<sup>8</sup> 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

The decision of the Office of Workers' Compensation Programs dated March 6, 2000 is affirmed with respect to the determination that appellant's previously accepted employment injuries have resolved. However, the case is set aside and remanded to the Office for further development of the record relevant to appellant's claim that her current back condition is causally related to her March 10, 1989 employment injury.

Dated, Washington, DC  
April 10, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member